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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 140324263-4990-02]

RIN 0648-BE12

Atlantic Highly Migratory Species; Transshipment, Port Inspection, and Vessel Identification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements regulations governing transshipment and international port inspection for vessels with Atlantic highly migratory species (HMS) permits to fulfill recent recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The final rule expands the current prohibition on transfer at sea to include any tuna, tuna-like species, or other Atlantic HMS both at sea and in port inside the Atlantic Ocean, and prohibits the transfer of Atlantic HMS by U.S. vessels outside of the Atlantic Ocean and its surrounding seas. However, Atlantic tuna purse seine category vessels are still allowed to transfer Atlantic bluefin tuna from the catcher vessel to the receiving vessel in certain limited circumstances. Additionally, this final rule revises current regulations for U.S.-permitted vessels landing tuna, tuna-like species, or other HMS in foreign ports or making port calls in foreign ports by updating information and reporting procedures. Finally, NMFS is notifying commercial HMS permit holders with vessels 20 meters or larger of an ICCAT requirement that they provide an International Maritime Organization (IMO)/Lloyd's Registry (LR) number on their permit

application by no later than January 1, 2016. The purpose of this rule is to ensure U.S. compliance with ICCAT recommendations and to facilitate implementation of international monitoring, control, and surveillance measures for Atlantic HMS fisheries.

DATES: This rule is effective on January 7, 2015.

ADDRESSES: Other documents relevant to this final rule are available from the Atlantic HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or upon request from the Atlantic HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rick Pearson at 727-824-5399 or LeAnn Hogan at 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries are managed under the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and regulations at 50 CFR part 635, pursuant to the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Atlantic Tunas Convention Act (ATCA). Under ATCA, the Secretary promulgates such regulations as may be necessary and appropriate to carry out ICCAT recommendations.

Background

A brief summary of the background of this final action is provided below. The details are described in the proposed rule for this action (79 FR 54247, September 11, 2014) and are not repeated here. Additional information regarding Atlantic HMS management can be found in the 2006 Consolidated Atlantic HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <http://www.nmfs.noaa.gov/sfa/hms/>. The comments received on the proposed rule for this action, and our responses to those comments, are summarized below in the section labeled “Response to Comments.”

In 2012 and 2013, ICCAT adopted binding measures for its Contracting Parties to further combat illegal, unregulated, and unreported (IUU) fishing activities. Consistent with these recent ICCAT recommendations, this final rule implements domestic regulations pertaining to transfer at sea and transshipment, and international port inspection for vessels that are issued, or required to be issued, Atlantic HMS permits. It also notifies owners of commercial HMS-permitted vessels that are 20 meters in length or greater of the need to obtain an IMO/LR number and to provide that number on their permit applications by no later than January 1, 2016.

Transfer at Sea and Transshipment

ICCAT Recommendation 12-06 expands and strengthens ICCAT's previously adopted program for transshipment. These changes were designed to enhance the quality of data collected for use in compliance assessments and for scientific purposes, and to eliminate any incentive for vessels to transship outside of the ICCAT convention area in order to circumvent ICCAT rules. Current domestic transfer at sea regulations already prohibit the transfer at sea of Atlantic HMS within the Convention Area (i.e., all waters of the Atlantic Ocean including adjacent seas), regardless of where the fish were harvested. The current regulations also require that permitted vessels offload Atlantic HMS to permitted dealers, thereby precluding transfers in port. In this rulemaking, NMFS is amending the regulations to expand the prohibition on transfer at sea to include any tuna, tuna-like species, or other HMS within the Convention Area both at sea or in port, and to also prohibit the transfer of these species at sea outside of the Convention Area, regardless of where the fish were harvested. With these minor changes, it would become unlawful for Atlantic HMS-permitted vessels (or vessels required to have an Atlantic HMS permit) to transfer tuna, tuna-like species, or other HMS in port or at sea, both within or outside the Convention Area. However, Atlantic tuna purse seine category vessels

would continue to be allowed to transfer only Atlantic bluefin tuna from the catcher vessel to the receiving vessel provided that the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

The HMS transfer at sea prohibition was first implemented in 1999 (64 FR 29090, May 28, 1999) in conjunction with publication of the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP) and was analyzed in the environmental impact statement for that action. The transfer at sea regulation has remained largely unchanged since then, with only two minor amendments in 2010 and 2011. This final action does not significantly alter the regulation. Also, there have been no known transfers of Atlantic tuna, tuna-like species, or other HMS by U.S. permitted vessels outside of the Convention Area (e.g., in the Panama Canal or Pacific Ocean). Thus, this final action is limited in magnitude and is not a significant change from the original environmental action. It is not expected to result in socio-economic impacts on U.S. fishermen.

Port Inspection

ICCAT Recommendation 12-07 establishes a scheme for minimum standards for inspection in port and revises and strengthens ICCAT's previous port inspection program (Recommendation 97-10). Pursuant to Recommendation 12-07, port State responsibilities include: (1) designating and publicizing their ports where foreign fishing vessels can land or transship ICCAT-managed species that have not previously been landed or transshipped at port; (2) requiring advance notice from foreign fishing vessels seeking to enter those ports; (3) deciding whether or not to grant entry to such vessels in consideration of the information received; and, (4) carrying out inspections of at least five percent of landing or transshipment operations made by foreign vessels once in port. The provisions of Recommendation 12-07 are

to be applied to foreign fishing vessels equal to or greater than 12 meters in length overall. Notwithstanding the above minimum standards, port States may adopt more stringent port inspection requirements.

ICCAT Recommendation 12-07 also requires that flag States take necessary action to ensure that masters facilitate safe access to the fishing vessel, cooperate with the competent authorities of the port State, facilitate the inspection and communication and not obstruct, intimidate or interfere, or cause other persons to obstruct, intimidate or interfere with port State inspectors in the execution of their duties.

NOAA, the United States Coast Guard (USCG), and other relevant Federal agencies are in inter-agency discussions on implementation of those provisions of Recommendation 12-07 that pertain to U.S. responsibilities as a port State, such as advance notice of arrival by foreign fishing vessels. Full implementation of those provisions will require separate, additional rulemaking in the future by one or more U.S. agencies and may be addressed in concert with other port State requirements stemming from measures adopted by other Regional Fishery Management Organizations (RFMOs), as well as the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing, adopted by the United Nations Food and Agricultural Organization (FAO) in 2009, should the United States become a party. The U.S. Senate gave its advice and consent for ratification of this treaty in April 2014 and Congress is currently considering implementing legislation.

In this final rule, NMFS is only implementing certain provisions of Recommendation 12-07. It revises 50 CFR 635.52 to include technical and electronic equipment, records, and other relevant documents deemed necessary to ensure compliance with ICCAT measures as examples of what may be inspected by an authorized officer of a port State when offloading tuna, tuna-like

species or other HMS in a foreign port or when making a port call in foreign ports. It also adds new language at § 635.53 to inform U.S. vessel operators of the information that they must provide to a port State prior to arrival in a foreign port. Finally, this rule adds § 635.54, which notifies U.S. vessel operators of the updated procedures for the port State when reporting the results of any port inspection conducted by an authorized foreign port State inspector. These final regulations are necessary to maintain consistency with current ICCAT recommendations and to ensure that operators of U.S. permitted fishing vessels have the most current information available to comply with the requirements of foreign countries pursuant to ICCAT Recommendation 12-07. These changes are limited in magnitude and are not expected to result in socio-economic impacts on U.S. fishermen.

Unique Vessel Identifiers

ICCAT Recommendation 13-13 requires vessels 20 meters or greater in length to obtain an IMO/LR number by no later than January 1, 2016. Current HMS regulations at § 635.4(h) are sufficient to comply with this Recommendation, as they allow NMFS to collect required supporting documents, which would include an IMO/LR number, as a condition for obtaining an Atlantic HMS permit and for being included on the ICCAT list of authorized large scale fishing vessels. Permit applications that do not contain the required supporting documents are considered incomplete. However, NMFS will need to amend the HMS permit applications to add a new field for the IMO/LR number. NMFS intends to amend the permit applications so that affected constituents can provide their IMO/LR number on the application for their 2015 permits. Therefore, through this rulemaking, NMFS is informing affected constituents about the need to obtain an IMO/LR number and to provide that number on their permit application by no later

than January 1, 2016. No regulatory changes are being implemented to comply with ICCAT Recommendation 13-13.

Technical Correction

A final rule to lift trade restrictions on bigeye tuna from Bolivia and Georgia was published in the Federal Register on August 29, 2012 (77 FR 52259). The prohibition on the import of bigeye tuna from Bolivia and Georgia at 50 CFR 635.71(b)(29) was inadvertently not removed by NMFS in that final rule. A technical correction to remove and reserve § 635.71(b)(29) is included in this final rule.

Response to Comments

The comment period for the proposed rule closed on October 14, 2014. NMFS did not receive any written comments from non-governmental organizations, fishermen, dealers, and other interested parties. NMFS received one comment from a constituent participating on the conference call/webinar on September 19, 2014. A summary of that comment is provided below along with NMFS' response.

Comment 1: I support the proposed measures because implementation would demonstrate U.S. compliance with ICCAT trade measures.

Response: NMFS agrees that the measures implemented by this rule would demonstrate U.S. compliance with ICCAT trade measures.

Changes from the Proposed Rule (79 FR 54247, September 11, 2014)

The proposed rule for this action added a new paragraph at § 635.71(a)(57). However, another rulemaking, the proposed rule for Amendment 7 to the Consolidated Atlantic HMS FMP (78 FR 52032, August 21, 2013), proposed to add provisions at the same paragraph number and others (§ 635.71(a)(57) – (60)). Because the paragraphs in the final rule for Amendment 7 to the

Consolidated Atlantic HMS FMP published and became effective prior to this action, the provisions proposed to be codified at § 635.71(a)(57) are now codified at § 635.71(a)(61) in this final rule. There is no change to the regulatory language contained in the proposed paragraph.

Classification

The NMFS Assistant Administrator has determined that this final action is necessary for the conservation and management of the Atlantic HMS fisheries, and that it is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable laws.

This final action has been determined to be categorically excluded from the requirement to prepare an environmental assessment in accordance with NOAA Administrative Order 216-6. A memorandum for the file has been prepared that sets forth the decision to use a categorical exclusion because the rule would implement minor adjustments to the regulations and would not have a significant effect, individually or cumulatively, on the human environment.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). ICCAT Recommendation 13-13

requires commercial vessels 20 meters or greater to obtain an IMO/LR number by no later than January 1, 2016. To comply with this Recommendation, as a condition for obtaining an Atlantic HMS permit, NMFS will require that an IMO/LR number be provided on the HMS permit application from affected constituents by no later than January 1, 2016. A permit application will be considered incomplete if an IMO/LR number is not provided by an affected constituent. An amendment to OMB Control Number 0648-0205 (Southeast Region Federal Fisheries Permit Family of Forms) and Control Number 0648-0327 (HMS Vessel Permits) will be submitted to the Office of Management and Budget for approval.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 25, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set out in the preamble, NMFS amends 50 CFR part 635 as follows:

PART 635-ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

2. Section 635.29 is revised to read as follows:

§ 635.29 Transfer at sea and transshipment.

(a) A person who owns or operates a vessel issued a permit, or required to be issued a permit, under § 635.4 may not transfer any tuna or tuna-like species, or other HMS, at sea or in port, regardless of where the fish was harvested, except as provided in paragraph (c) of this section.

(b) For the purposes of this part, “transfer” means the act of “transshipping” as defined at 50 CFR 300.301. Notwithstanding the definition of “harvest” at §600.10, for the purposes of this part, transfer also includes, but is not limited to, moving or attempting to move a tuna that is on fishing gear or other gear in the water from one vessel to another vessel.

(c) An owner or operator of a vessel for which an Atlantic Tunas Purse Seine category permit has been issued under §635.4 may transfer large medium and giant Atlantic BFT at sea from the net of the catching vessel to another vessel for which an Atlantic Tunas Purse Seine category permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

3. Section 635.51 is revised to read as follows:

§ 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party to conduct inspections for the purpose of determining compliance with ICCAT conservation and management measures and who possesses identification issued by the authorized officer’s national government.

4. Section 635.52 is revised to read as follows:

§ 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT that have not been previously landed or transshipped at port, as well as the vessel's catch, gear, equipment, records, and any documents the authorized officer deems necessary to determine compliance with ICCAT conservation and management measures, are subject to inspection when in a port of any ICCAT contracting or cooperating non-contracting party. A list of ports, designated by ICCAT contracting or cooperating non-contracting parties, to which foreign vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT may seek entry is available on the ICCAT website.

(b) While in port, the master, crewmember, or any other person on a U.S. vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT must cooperate with an authorized officer during the conduct of an inspection, including by facilitating safe boarding. ICCAT recommendations require that inspections be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

5. Section 635.53 is revised to read as follows:

§ 635.53 Prior notification.

(a) U.S. vessels carrying tuna or tuna-like species or other HMS that are seeking to enter the port of another ICCAT contracting or cooperating party must provide to the port State, at least 72 hours before the estimated time of arrival at the port or in accordance with any other time period specified by the foreign government, the following information:

(1) Vessel identification (External identification; Name; Flag State; ICCAT Record No., if any; IMO No., if any; and international radio call sign);

(2) Name of the designated port, as referred to in the ICCAT register, to which it seeks entry and the purpose of the port call;

(3) Fishing authorization or, where appropriate, any other authorization held by the vessel to support fishing operations on ICCAT-managed species and/or fish products originating from such species;

(4) Estimated date and time of arrival in port;

(5) In kilograms, the estimated quantities of each ICCAT-managed species and/or fish products originating from such species to be held on board and to be landed, with associated catch areas;

(6) Other information, as requested by the foreign ICCAT contracting or cooperating non-contracting party, to determine whether a vessel has engaged in IUU fishing, or related activities;

(b) After receiving information pursuant to paragraph (a) of this section, the foreign ICCAT contracting or cooperating non-contracting party should decide whether to authorize or deny the entry of a vessel into its port.

6. Section 635.54 is added to read as follows:

§ 635.54 Reports.

Owners and operators of U.S. vessels subject to inspection under § 635.23 are hereby notified that the ICCAT recommendation establishing a scheme for minimum standards for inspection in port requires that:

(a) Upon completion of the inspection, the authorized officer shall provide the Master of the U.S. fishing vessel with the inspection report containing the findings of the inspection, including any violations found and possible subsequent measures that could be taken by the foreign ICCAT contracting or cooperating non-contracting party. The Master of the U.S. vessel is entitled to add or have added to the report any comments or objections, and to add his or her own signature as an acknowledgement of receipt,

(b) Copies of the inspection report shall also be provided by the port State to the ICCAT Secretariat and, as appropriate, to NMFS and other contracting or cooperating non-contracting parties of ICCAT,

(c) Any enforcement action taken by the foreign ICCAT contracting or cooperating non-contracting party in response to an infringement shall be reported to the United States and to the ICCAT Secretariat, and

(d) The foreign ICCAT contracting or cooperating non-contracting party shall refer any infringements found that do not fall within its jurisdiction, or with respect to which it has not taken action, to the flag State of the vessel (i.e., to NMFS).

7. In § 635.71:

- a. Add paragraph (a)(61);
- b. Revise paragraph (b)(21);
- c. Remove and reserve paragraph (b)(29);
- d. Revise paragraphs (c)(2), (d)(5), and (e)(5) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(61) Transfer in port or at sea any tuna, tuna-like species, or other HMS, as specified in § 635.29(a).

(b) * * *

(21) Transfer a tuna, except as may be authorized for the transfer of Atlantic BFT between purse seine vessels, as specified in § 635.29(c).

* * * * *

(c) * * *

(2) Transfer a billfish in port or at sea, as specified in § 635.29(a).

* * * * *

(d) * * *

(5) Transfer a shark in port or at sea, as specified in § 635.29(a).

* * * * *

(e) * * *

(5) Transfer a swordfish in port or at sea, as specified in § 635.29(a).

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